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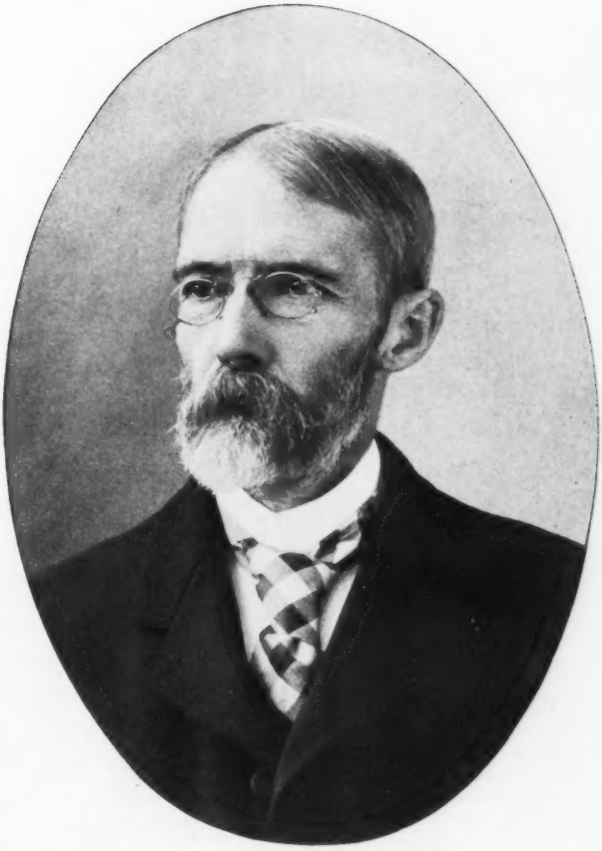

W. W. Howe

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Case and Comment

NOTES OF

RECENT IMPORTANT, INTERESTING DECISIONS
INDEX TO ANNOTATION OF THE LAWYERS' REPORTS, ANNOTATED
LEGAL NEWS NOTES AND FACETIÆ

VOL. 4 SEPTEMBER, 1897. NO. 4

CASE AND COMMENT

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THE LAWYERS' CO-OPERATIVE PUB. CO.,
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William Wirt Howe.

The president of the American Bar Association chosen at its recent session in Cleveland, Ohio, who has been for years one of the prominent members of that body, is William Wirt Howe, of New Orleans, La. Mr. Howe was born in Canandaigua, N. Y., and graduated at Hamilton College in 1853. He studied law both in St. Louis and in New York. During the Civil War he was an officer of the United States Volunteers. After the war he returned to law practice in New Orleans. He became one of the judges of the supreme court of Louisiana and did admirable service on the bench from 1868 to 1873. He is now at the head of the law firm of Howe, Spencer & Locke, of New Orleans.

The numerous opinions which Judge Howe wrote while on the Bench, and which appear in the Louisiana Annual Reports, are admirable examples of brevity; and they are also remarkable for the directness and clearness with which they present facts, reasons, and conclusions. On constitutional questions he saw clearly the line between judicial and legislative power. One of his terse sentences sums up the matter in these words: "Our views of public policy, like those of other citizens, may be expressed at the ballot box, but we have no right, as judges, to enforce them by a decree of the court."

Judge Howe is a leading citizen as well as a leading lawyer of his state. In addition to his extensive law practice and his service on the bench, he has been president of the Louisiana Historical Society, and treasurer of the University of Louisiana, and, he is now president of the Civil Service Commission of New Orleans.

In legal work Judge Howe's interest has not been confined to his cases. He has delivered lectures at Yale and also at the University Law School of New York. He read a paper on "The Historical Relation of the Roman Law to the Law of England" before the American Bar Association in 1895. He is also the author of "Studies in the Civil Law," published in 1896, by Little, Brown & Co. In addition to his legal publications he has written a history of the city government of New Orleans which was published by Johns Hopkins University.

This very brief outline of facts may give some indication of the wide range of the culture, as well as of the intellectual and public activities, of Judge Howe, which have made it eminently fitting that he should be selected as the president of the American Bar Association.

The Measure of a Legal Right.

"Chief Justice Best was committing himself to a very bold proposition," says the "London Law Journal," "when he said in Bird v. Holbrook [4 Bing. 628] that there is no act which Christianity forbids that the law will not reach." The conclusion of the Law Journal, too obviously true for dispute, is that

"the law in fact allows what, for want of a better word, we may call legitimate selfishness. It commends the higher standard of Christianity but does not exact it."

The basis of every action is some breach of duty toward another. Why, then, is not every breach of duty actionable? It is very clearly and comprehensively said in Walker v. Cronin, 107 Mass. 555, that the intentional causing of temporal loss or damage to another without justifiable cause and with the malicious purpose to inflict it is of itself a wrong. But beyond this is the whole range of the law of negligence by which the mere lack of proper care, even without any malice or intent to injure, is held actionable. Clearly enough the roots of this law are in the golden rule. Yet this is far from saying that the law will enforce all that the golden rule requires. The rule of negligence which tests it by the act of an ordinarily prudent man clearly suggests the extent to which the Christian rule of right has become law. A man's respect for the golden rule will fairly measure the extent of his care for others. The more men care for the interests of others the more care they will take to avoid injuring them. As the average of human conduct improves it raises the level of legal obligation. Any rule of right when adopted in practice by a strong working majority of the people is likely to be accepted by the courts as a legal right, even without any statutory enactment. The humanity of the law increases, and the bold claim of Chief Justice Best would become true if the Christian rule of human brotherhood became, not merely an accepted theory, but a practical rule of life for a dominant majority of the people. Common morality in a rude way is the measure of a common-law right. A legal right is, in short, a right which the common, average sense of justice has become enlightened enough to recognize as a practical rule of conduct.

Disbarment for the Public Good.

The duty of the court to remove from his office an attorney who is unworthy of trust is not primarily to punish him but to protect the court and community. This is clearly stated by the court in a recent Vermont case in which a petition to set aside a judgment of disbarment was dismissed, although it had been signed by a majority of the bar in every county of the state and in many instances by nearly the entire bar of the county, and was supported in an argument by the oldest practising member of the bar of the state. The court remarks that the petition and the argument proceeded on the ground that the disbarment was for the purpose of punishing the attorney for an offense, and that the punishment already suffered had been sufficiently severe for that single offense. But for want of anything to show the good moral character of the disbarred attorney, the court, with entire unanimity, refused to reinstate him. The firmness of the court in the face of the petition of almost the entire bar of the state is very gratifying. Nothing but clear proof that a disbarred attorney has become trustworthy can justify his reinstatement if he was justly disbarred.

Mailing an Acceptance.

The time when the acceptance of a contract by mail takes effect was held by the Quebec Court of Queen's Bench in the recent case of Underwood v. Maguire, Rap. Jud. Quebec, 6 B. R. 237, to be the time when the letter was received, and not the time when it was mailed. The majority of the court bases this decision on the proposition that there was never a final and definite agreement to which both parties at a given time gave their consent, as a letter revoking the offer had been mailed before the acceptance was received. It cites the French case of de Marans v. veuve Deschamps, decided by the court of appeal of Orléans, also Baudry-Lacantinerie, vol. 2, § 797. But two judges dissent, and the dissenting opinion declares that it is a fact of great importance that the jurisprudence of England and the United States, the greatest commercial countries of the world, adopts the contrary doctrine.

In Massachusetts the case of M'Culloch v. Eagle Ins. Co. 1 Pick. 278, reached the same conclusion as that adopted by the Quebec court. But it is conceded by the Massachusetts court that in England, New York, and New Jersey, and in the Supreme Court of the United States the opposite view has prevailed and the contract deemed to be complete as soon as the letter of acceptance has been put into the post-office duly addressed. Except in Massachusetts this seems to be the generally accepted law of the United States as well as of England. But the case of Lewis v. Browning, 130 Mass. 173, holds that the party making an offer may properly stipulate that the acceptance must

actually reach him before he shall be bound thereby. It is always possible, therefore, for a party making an offer to preserve the right of revocation up to the moment that he actually receives the acceptance.

Use of Mails for Lotteries.

A complete overthow of the act of Congress against the use of the mails for lottery purposes will result from the recent decision of the United States circuit court in Kentucky by Judge Barr in the case of Hoover v. McChesney, 81 Fed. Rep. 472, unless that decision is reversed. It holds that the right of a citizen to use the mails is a property right of which he cannot be deprived without due process of law, and that the exclusion from the mails by the postmaster general of all matter directed to a person engaged in conducting a lottery cannot be authorized by Congress, as this denies him the use of the mails even for lawful purposes. While it holds that a corporation engaged in such business may be entirely denied the use of the mails, on the assumption that all matter sent to it would be unmailable, it rejects this rule in case of a citizen. Therefore it is held that letters directed to an individual without anything to indicate that they relate to lottery business cannot be excluded, but those directed to him with words indicating his connection with a lottery company may be excluded.

The constitutional guaranty against unlawful searches and seizures is also held in that case to be violated by returning sealed letters or packages to the dead letter office as unmailable if there is nothing on them to show their unlawful character. That constitutional provision was also held in *Re* Jackson, 96 U. S. 727, 24 L. ed. 877, to be violated by opening sealed letters for the purpose of detecting their illegal contents.

The result is that mails can be used for lottery purposes *ad libitum* if the matter sent is inclosed in sealed envelopes addressed merely in the name of an individual without anything on the outside to show a connection with a lottery. It is not easy to see any constitutional way of preventing this although we may hope it will be found by the higher court on reviewing this decision.

Rights of Strikers in the Highway.

Many intemperate words have been recently spoken and written about the injunction by the Federal court in West Virginia against the obstruction of a highway by strikers. There have been some misstatements of fact and much grossly ignorant comment made on the law of the case. It appears from the report of the decision in Mackall v. Ratchford, 38 Ohio L. J. 174, that the injunction did not prohibit the use of the highway by the strikers for travel, or even for marching along the road. The officers who served it were careful to explain to the men that they could march past the mines if they wished, but could not continue to march and countermarch to and fro past the place. The court found that a body of 200 men, not only did march to and fro, but took up positions on each side of the road, standing from 3 to 5 feet apart, where the miners must pass between their lines. The court further found that the intent and effect of the use of the highway were to intimidate the workmen and destroy their liberty of action in respect to continuing their employment.

The law on these facts is so plain that those who charge the court with straining it against the strikers are either malicious or grossly ill informed. The loose notion of an unlimited right of a crowd of people to march and carry on a campaign upon the highway seems to have been honestly entertained by the strikers, and the deprivation of this supposed right has been the ground of violent but ignorant indignation in speech and press. The long-established law of the subject is well stated in Elliott's standard work on Roads and Streets as follows: "The common law guards with jealous care the rights of the owner of the servient estate in a suburban road against encroachment by individuals, and holds them strictly to the use of the road for the purpose of passing and repassing." So, the leading case of Adams v. Rivers, 11 Barb. 398, held that it was a trespass for a man to stand on a sidewalk in a highway and use abusive language to the owner of the land over which the road ran. The court said: "The public have no need of the highway but to pass and repass. If it is used for any other purpose not justified by law the owners of the adjoining land are remitted to the same rights they possessed before the highway was made. They can protect themselves against such annoyances by treating the intruders as trespassers."

There has been wild talk about this decision being a menace to liberty. This is mere recklessness of passion, but may deceive those who do not know better. The authorities

clearly show that the liberties of our fathers never included the right to do what this injunction forbade.

But although the court kept well within the language of the established law of the subject, it is greatly to be regretted that there was any clash, even slight, between the strikers and its authority. The success of this great strike of coal miners is matter of the highest satisfaction to good citizens. The seriousness, dignity, self-control, and good conduct of the great body of the strikers, as well as the merit of their demand, won them the heartiest sympathy of all true Americans. They have not shown any disposition to be guided by vicious or reckless leaders. Their breach of the law in the injunction case seems to have been largely due to a mistaken belief as to what the law is.

Railroad Valuation.

A new rule for the valuation of railroad property by local assessors in New York is adopted in the recent case of People, *ex rel.* Delaware, L. & W. R. Co., *v.* Clapp, 152 N. Y. 490, — L. R. A. —. The cost of reproducing the road is declared to be the maximum at which an assessment can be made by local assessors. This is said to be the just and reasonable amount in case of a paying railroad, while in case of an unprofitable one the real value for the purpose of assessment may be less than the cost of reproduction. But earlier cases in the court of appeals, as well as in the supreme court of the state, recognized the earning capacity of a railroad as an element of the value for local taxation. One of these, decided, like the Clapp Case, under statutes making the railroad franchises separately taxable, is People, *ex rel.* Rome, W. & O. R. Co., v. Hicks, 40 Hun, 598, in which Bradley, J., said: "The estimate of value of any portion of the road cannot be intelligently made without some knowledge or information of it as a whole and its business, earnings, and ordinary expenses." On affirming this case in 105 N. Y. 198, the court of appeals sustained the right of the local assessors to consider the earning capacity of the road, although it says, indeed, that the record did not show that earning capacity was the sole basis of valuation. But the mode of assessment upheld in that case is altogether repudiated by the Clapp Case. While the court says the real estate of a railroad in a town is to be assessed as part of a line of railroad with all its incidents, including the business and profits to be derived therefrom, it declares that the reasonable and practicable method of estimating that value is to take the cost of reproducing the road.

A different rule is laid down by the supreme court of Nevada in the case of State *v.* Virginia & T. R. Co. 46 Pac. 723, 35 L. R. A. 759. That court declares that the earning capacity of a railroad is the main consideration, though perhaps not the only one, for county assessors in determining the taxable value of a railroad which could be replaced for much less than its original cost. The statutes of that state require a railroad to be assessed at its cash value, but, unlike the statutes of New York, expressly provide that the portion thereof within a county shall be assessed "as an integral part of a complete, continuous, operated line of railroad, and not as so much land covered by the right of way merely, or as so many miles of track consisting of iron rails, ties, and couplings." The Nevada decision is based largely upon the earlier New York cases, which are in effect overruled by the Clapp Case. But the difference between these recent decisions has sufficient basis in the difference between the statutes of the respective states. The chief reason for the latest New York rule which excludes earnings from the consideration is in the fact that the franchises of the company are separately taxable; and it does not appear that that is the case in Nevada.

The power of a state to tax a proportionate part of the intangible property of an interstate railroad company has been definitely established by the Supreme Court of the United States in Pittsburg, C. C. & St. L. R. Co. *v.* Backus, 154 U. S. 421, 38 L. ed. 1031, and Cleveland, C. C. & St. L. R. Co. *v.* Backus, 154 U. S. 439, 38 L. ed. 1041, affirming 18 L. R. A. 729. Mr. Justice Brewer said in the latter case: "The true value of a line of railroad is something more than an aggregation of the values of separate parts of it operated separately. It is the aggregate of those values plus that arising from a connected operation of the whole; and each part of the road contributes, not merely to the value arising from its independent operation, but its mileage proportion of that flowing from a continuous, connected operation of the whole." The doctrine of these cases has been emphasized by its recent application to express companies in Adams Express Co. *v.* Ohio State Auditor, 165 U. S. 194, 41 L. ed. 683, and rehearing in 166 U. S. 185, 41 L. ed. 965. That doctrine is not re-

jected in the Clapp Case, since in the latter the assessment was limited by the statutes to real estate only; and the court expressly admits that the application of a different principle might be required when, as in the Federal cases, the assessment could extend to all the property and every element of value.

Considering the vast amount of railroad property to be assessed, these decisions are of the highest importance. These decisions are of widespread interest. They are the most important yet rendered on the subject.

Index to Notes

IN

LAWYERS' REPORTS, ANNOTATED.

Book 36, Parts 3 and 4.

Mentioning only complete notes therein contained, without including mere reference notes to earlier annotations.

Among the New Decisions.

Banks.

A certificate of deposit reciting that it is "to be left six months," and adding, "No interest after maturity," is held, in Towle v. Starz (Minn.) 36 L. R. A. 463, to be a time, and not a demand, certificate, and that to hold an indorser payment must be demanded at the end of six months on the last day of grace.

Bicycles.

A bicycle association which agrees to clean a member's bicycle twice each year, repair tires when punctured by accident, and the bicycle if damaged by accident, also to replace it if stolen unless recovered in eight months, and provide another bicycle during that time, in consideration of which the member pays $6 membership fee per year, is held, in Com., Hensel, v. Provident Bicycle Asso. (Pa.) 36 L. R. A. 589, not to constitute an insurance company for which a charter is necessary under the Pennsylvania statutes.

Bills and Notes.

An illiterate maker, induced by fraud to sign a note and mortgage, supposing he is signing other instruments, is held, in Green v. Wilkie (Iowa) 36 L. R. A. 434, not to be liable, even when the note is in the hands of an innocent purchaser, unless he was guilty of negligence in making the note. This is on the ground that he was never a party to the contract contained in the instrument.

The maturity of a promissory note bearing date "7th November," 1895, and payable "21st November next," is held, in Drapeau v. Pominville (Rapp. Jud. Quebec) 11 C. S. 326, to be reached, not on the 21st of the current month, but on the 21st of November in the following year.

Failure of the apparent maker to repudiate his forged signature to a note when it is first shown him, and even his statement that the note will be paid, is held, in Traders' Nat. Bank v. Rogers (Mass.) 36 L. R. A. 539, to be insufficient to render him liable unless the holder had been induced thereby to assume and act upon the assumption that the signature was genuine or was admitted to be so. The note to the case reviews the decisions on the liability of persons whose signatures are forged on commercial paper, including the questions of estoppel and ratification of such signatures.

Carriers.

The misdelivery of goods by an agent of a connecting line or a warehouseman is held, in Illinois Cent. R. Co. v. Carter (Ill.) 36 L. R. A. 527, insufficient to render the forwarding carrier liable, where the goods were safely delivered to the connecting line, and safely carried to the destination.

The fact that a train was running at high speed in violation of law and in breach of the promise of the engineer, made to a boy who intended to jump off, is held, in Howell v. Illinois Cent. R. Co. (Miss.) 36 L. R. A. 545, insufficient to render the railroad company liable for injury to the boy, when he attempted to get off knowing the danger.

The fact that a person is blind is held, in Zachery v. Mobile & O. R. Co. (Miss.) 36 L. R. A. 546, insufficient to justify a carrier in refusing to accept him as a passenger.

Commerce.

The solicitation of pictures to be enlarged outside the state is held, in State v. Scott (Tenn.) 36 L. R. A. 461, to constitute interstate commerce, so that a privilege tax imposed upon it by state statute, except when the soliciting is done by photographers of the state, is held to be unconstitutional.

Counties.

A suit to cancel invalid county warrants was unsuccessful, in Ada County v. Bullen Bridge Co. (Idaho) 36 L. R. A. 367, on the ground that a remedy provided by statute, to compel the holders of the warrants to wage their claims on them or else abandon them, was an adequate remedy at law which rendered the suit in equity for cancelation unnecessary.

The necessary expenditures of a county which are made mandatory by the Constitu-

tion, and are provided for by the legislature, are held, in Rauch v. Chapman (Wash.) 36 L. R. A. 407, to be excluded from the constitutional provision limiting the amount of county indebtedness.

Covenants.

A building erected in place of one which had been destroyed on premises subject to a covenant against erecting any building thereon except one of which the design was approved by certain directors of an association is held in Peabody Heights Co. v. Wilson (Md.) 36 L. R. A. 393, to be subject to such covenant only so far as to prevent erecting a structure inferior to the original one, or which was calculated to depreciate the value of the adjacent property, but that the new building need not necessarily be of the same plan as the original one, or approved in all its details by the directors.

Criminal Law.

Voluntary intoxication is held, in Harris v. United States (D. C. App.) 36 L. R. A. 465, to be neither an excuse nor a palliation for the crime of murder.

Debtor and Creditor.

An attempt to evade the exemption laws of the state in which both parties reside, by a creditor who attaches property of his debtor temporarily found in another state, and enforces his claim there notwithstanding an injunction from a court of his own state, is held, in Stewart v. Thomson (Ky.) 36 L. R. A. 582, to render the creditor liable to his debtor in an action for damages in the state of their residence.

Ejectment.

A merely parol dedication of a street is held in San Francisco v. Grote (Cal.) 36 L. R. A. 502, to be insufficient to support an action of ejectment by the city against the owner of the fee.

Eminent Domain.

A subsequent ordinance removing the restrictions on the location and width of an elevated railroad, which had been made by a former ordinance, is held, in Tudor v. Chicago & South Side R. T. R. Co. (Ill.) 36 L. R. A. 379, to be applicable to pending proceedings for condemnation of the right of way.

Power to exercise the right of eminent domain for the relocation of a railroad is held, in Lusby v. Kansas City, M. & B. R. Co. (Miss.) 36 L. R. A. 510, to be not implied merely because the relocation would avoid payment of damages for injuries to lands and crops by flood water caused by a prior improper location. A note to this case reviews the authorities on the right to relocate a railroad. The case itself overrules a decision in 42 Miss. 555, and says: "The opinions found in that volume are the utterances of a tribunal appointed by the military satrap who then ruled in a prostrate commonwealth, and have no other binding authority upon us than that each case therein must be regarded as *res judicata*."

Extradition.

A prisoner in a reformatory who violates his parol by going into another state is held, in Drinkall v. Spiegel (Conn.) 36 L. R. A. 486, to be a fugitive from justice within the provision of the United States Constitution for the surrender, on demand of the executive of another state, of the person fleeing from justice.

Fraud.

The knowledge of a creditor that his debtor is heavily in debt is held, in Feder v. Ervin (Tenn.) 36 L. R. A. 335, insufficient to make his purchase of property of his debtor in satisfaction of his debt fraudulent as to other creditors.

Garnishment.

A note held by a nonresident which is payable where he resides is held, in Ward v. Boyce (N. Y.) 36 L. R. A. 549, to be in no sense property of the debtor, or within the power of the courts at the debtor's residence, for the purpose of making any decree in trustee process affecting its title or ownership.

The treasurer of a private corporation having, as such, moneys of the corporation in his hands is held, in Mayo v. Milwaukee Amusement Co. (Wis.) 36 L. R. A. 561, to be subject to garnishment on a judgment against the corporation.

Gas.

The sickness and death of children, which are directly due to the failure of a natural gas company to supply the needed gas for fuel to a dwelling house in winter, when it had assumed to furnish the supply and other fuel could not be procured, are held, in Coy *v.* Indianapolis Gas Co. (Ind.) 36 L. R. A. 535, to be elements of damages recoverable from the gas company.

Highways.

An ordinance limiting the speed of driving on streets to 6 miles an hour is held, in State *v.* Sheppard (Minn.) 36 L. R. A. 305, to be inapplicable to a salvage corps responding to an alarm of fire, and as to them it is held that the restriction is unreasonable and invalid.

Power to license and exact a reasonable fee for the use of streets and alleys by vehicles is held, in Tomlinson *v.* Indianapolis (Ind.) 36 L. R. A. 413, to be within the general power to regulate the use of streets. And the fact that some revenue arises from the licenses is held insufficient to condemn them.

An evident and notorious abandonment of a public road, with the physical closing of it, known to the municipal authorities, on the faith of which private parties have expended money in improvements, is held, in Baldwin *v.* Trimble (Md.) 36 L. R. A. 489, to constitute an estoppel against the reassertion of the public easement.

Homestead.

A claim of a homestead exemption in property conveyed to defraud creditors, when such conveyance has been set aside at the suit of a creditor and the land declared subject to his judgment, is upheld in Kennedy *v.* First Nat. Bank (Ala.) 36 L. R. A. 308. Several judges dissent, and very elaborate opinions review the authorities on the subject on both sides.

Husband and Wife.

The statutory limitation on the rights of a husband to make gifts of community property without the wife's written consent is held, in Spreckels *v.* Spreckels (Cal.) 36 L. R. A. 497, to be inapplicable to community property acquired before the passage of the act, since the husband's right in that property cannot be devested by statute.

Injunction.

The unlawful extraction of petroleum oil or gas from land is held, in Bettman *v.* Harness (W. Va.) 36 L. R. A. 566, to constitute irreparable injury which may be enjoined in equity.

Insurance.

An heir expectant placed by his father in possession of land bought for him, and which the father intends to devise to him, is held, in Home Ins. Co. *v.* Mendenhall (Ill.) 36 L. R. A. 374, to have an insurable interest, although the land was bought at a master's sale in partition and the deed has not yet been made because the time for confirmation of the report has not elapsed.

Placing fireworks in the parlor of a residence for use the next day in a Fourth of July celebration is held, in Heron *v.* Phœnix Mut. F. Ins. Co. (Pa.) 36 L. R. A. 517, to avoid the insurance on the building under a clause prohibiting fireworks to be "kept, used, or allowed" on the premises, "any usage or custom of trade" to the contrary notwithstanding.

Landlord and Tenant.

The destruction of a substantial portion of leased premises without the lessee's fault is held, in Wattles *v.* South Omaha Ice & C. Co. (Neb.) 36 L. R. A. 424, to relieve the lessee from liability for rent *pro tanto*, unless he expressly assumed the risk of the destruction. This repudiates the common-law rule approving an opinion of Judge Brewer in a Kansas case, "because it is a magnificent protest against slavish devotion to antiquated rules, and . . . because it breathes the spirit of humanity and equity, and is based on a thought of the nineteenth century."

License.

Power to impose a license tax upon nonresidents who carry on business within city limits is upheld in Petersburg *v.* Cocke (Va.) 36 L. R. A. 432, where the rule was applied to an attorney at law having an office in the city, but residing outside.

Mortgages.

A mortgage upon personal property removed to another county before the mortgage

is recorded, is required in the case of Fassett v. Wise (Cal.) 36 L. R. A. 505, to be recorded in the latter county only.

Municipal Corporations.

The liability of a municipality for damage to premises by surface water resulting from changing the grade of a street is held, in Jordan v. Benwood (W. Va.) 36 L. R. A. 519, to be limited to cases in which the water is collected and cast upon the lot in a body or mass; and the mere fact that the surface water is interfered with or its flow increased by a change of grade is insufficient to make the city liable.

An ordinance regulating the number of hours in which laborers and mechanics shall be employed on the public works belonging to the city, and making its violation a misdemeanor, is held, in State v. McNally (La.) 36 L. R. A. 533, to be invalid, as the legislature only can create such an offense.

The power of a city council to order the destruction of all intoxicating liquors in the city, and pledge the faith of the city to pay for them in anticipation of riot, lawlessness, and mob, as on the evacuation of Richmond, in April, 1865, is denied, in Wallace v. Richmond (Va.) 36 L. R. A. 554, overruling a prior decision in that state which had been followed by the Supreme Court of the United States in another case growing out of similar facts.

Negligence.

For the loss of the fingers of a little child who puts her hand up the spout of a coffee grinder in a store or shop, while there with her father to make a purchase, it is held, in Holbrook v. Aldrich (Mass.) 36 L. R. A. 493, that the shopkeeper is not liable.

Negligence in pointing a gun at another and pulling the trigger is held, in Bahel v. Manning (Mich.) 36 L. R. A. 523, to be unaffected by the fact that the person doing it had used the ordinary means of unloading the gun and satisfied himself that it was unloaded. But the fact that the person injured failed to protest or get out of the way when he saw that the gun was about to be snapped, and had time to do so, was held to constitute such contributory negligence as would preclude his recovery of damages from the other.

An aged woman riding in a funeral procession in a carriage driven by her daughter-in-law, when it was struck by a street car at a crossing, is held, in Johnson v. St. Paul City R. Co. (Minn.) 36 L. R. A. 586, to be not chargeable with negligence, although she did not look or listen for approaching cars, but relied entirely upon the driver.

Railroads.

For fire communicated from a cooking car owned by an independent contractor engaged in cutting wood for a railroad company, it is held, in Leavitt v. Bangor & A. R. Co. (Me.) 36 L. R. A. 382, that the railroad company is not liable, although it had placed the car on a spur track for the use of the contractor.

A conveyance to a railroad company, releasing all damages sustained or which shall be sustained by reason of the "construction, building, or use" of the railroad, is held, in Fremont, E. & M. V. R. Co. v. Harlin (Neb.) 36 L. R. A. 417, insufficient to preclude the grantor from recovering damages for the negligent maintenance and operation of the road; but the release is treated as equivalent in this respect to a judgment of condemnation.

The assumption by the engineer of a train that a person on the track will get off before the train reaches him is held, in Gunn v. Ohio River R. Co. (W. Va.) 36 L. R. A. 575, to be improper when the person on the track is a child of tender years, or one who is plainly and obviously disabled by deafness, intoxication, sleep, or other cause.

Release.

The fact that a woman injured in a railway car was stunned, and after recovering consciousness was still dazed and nervous when a release of damages presented to her in a hospital was signed by her without reading, is held, in Och v. Missouri, K. & T. R. Co. (Mo.) 36 L. R. A. 442, insufficient to avoid the release, although it was obtained by misrepresenting to her its contents.

Review.

The interest necessary to give a standing to maintain a bill of review of a foreclosure suit, which does not appear on the record of that suit, is held, in Thorington v. Thorington (Ala.) 36 L. R. A. 385, to be improperly introduced into a bill of review when it is based on matter which existed at the time of the decree, but was not brought forward before its rendition.

Stables.

A statute against keeping more than four horses in any building or place without a license is held, in Brookline v. Hatch (Mass.) 36 L. R. A. 495, to be violated by keeping more than that number on the same lot in several buildings.

Subrogation.

A claim by the holders of void bonds, the proceeds of which were used to pay off prior void bonds, that they are entitled to be subrogated to the right of subrogation which the holders of prior bonds had against those whose claims were paid off by the original bonds, is denied, in Ashuelot Nat. Bank v. Lynn County (C. C. N. D. Iowa) 81 Fed. Rep. 127, on the ground that both classes of bondholders are mere volunteers.

Tolls.

The exaction of tolls by a turnpike company after the expiration of the franchise is held, in State, Allison, v. Hannibal & Ralls County Gravel Road Co. (Mo.) 36 L. R. A. 457, to constitute a public nuisance which can be abated at the instance of the state.

Voters and Elections.

The use of a voting machine by which a ballot containing the names of candidates is punctured and a record of the choice of the voters secured thereby is held, in Opinion of the Justices (R. I.) 36 L. R. A. 547, to be authorized by a constitutional provision for voting by ballot.

Writs.

Statutory permission to serve process on a domestic corporation by publication if its officers or agents cannot be found in the state is held, in Bernhardt v. Brown (N. C.) 36 L. R. A. 402, to be insufficient to authorize a sale of the property of the corporation on execution under a judgment based on such service, except in case of an attachment of property.

New Books.

"Cases on Real Property." By Prof. C. G. Tiedeman. The F. H. Thomas Law Book Co., St. Louis. 1 Vol. $3.50.

"White on Corporations." 3d. ed. Matthew Bender, Albany, N. Y. 1 Vol. $7.50.

"Indirect and Collateral Evidence." By John H. Gillett. The Bowen-Merrill Co., Indianapolis, Ind. 1 Vol. $4.

"Forms of Instructions to Juries and of Judgment Entries." By Edgar B. Kinkead. W. H. Anderson & Co., Cincinnati, Ohio. 1 Vol. $6.

"The Laws of Texas, 1824–1897." Gammel Book Co., Austin, Tex. 10 Vols. $50.

"Canadian Annual Digest, 1896." By Charles H. Masters and Charles Morse. Canadian Law Journal Co., Toronto. 1 Vol. $3.50.

Recent Articles in Law Journals and Reviews.

"John Wilkes and the Liberty of the Press. The Wilkes Cup."—22 Law Magazine and Review, 213.

"Fixity of Tenure in India."—22 Law Magazine & Review, 216.

"Procedure in Poetry."—22 Law Magazine & Review, 224.

"Some Thirteenth Century Statutes."—22 Law Magazine & Review, 240.

"The Society and Fellowship of the Inner Temple."—103 Law Times, 366, 383.

"Prisoners of War."—103 Law Times, 380.

"Jactitation of Marriage."—103 Law Times, 381.

"Statutory Reformation of the Marriage Laws."—5 American Lawyer, 10.

"The Logical Conception of a Corporation."—5 American Lawyer, 12.

"Scope of the Judiciary."—5 American Lawyer, 14.

"Legal Education in England."—5 American Lawyer, 254.

"Teaching Practice in Law Schools."—5 American Lawyer, 257.

"Report of Committee on Uniform System of Legal Procedure."—5 American Lawyer, 259.

"Magna Charta Regis Johannis."—5 American Lawyer, 263.

"Parol Evidence."—103 Law Times, 396.

"Assurances for Benefit of Wife and Children."—103 Law Times, 397.

"Soldiers' and Sailors' Wills,"—103 Law Times, 397.

"French Advocates."—103 Law Times, 402.

"Discovery in Aid of Execution at Law."—45 Central Law Journal, 209.

"Carriers of Passengers—Round Trip Tickets—Conditions."—45 Central Law Journal, 212.

"Perpetuities and Charities."—29 Chicago Legal News, 390.

"Punctuation—How Considered in the Law."—45 Central Law Journal, 229.

"Parent and Child—Infants."—45 Central Law Journal, 237.

"Patria Potestas."—3 University Law Review, 307.

"The Annual Taxation, in New York State, of a Foreign Business Corporation."—3 University Law Review, 312.

"What Do We Know of the Thodian Maritime Law?"—3 University Law Review, 320.

"Mandamus to the Governor of a State."—3 University Law Review, 334.

"Lawmaking."—5 American Lawyer, 432.

"Security under the Law is the Staff and Shield of the Republic."—5 American Lawyer, 436.

"The De Facto Wife."—5 American Lawyer, 439.

"The Annual Taxation of a Foreign Corporation Doing Business in New York."—5 American Lawyer, 442.

"The Lawyer and the Shyster."—5 American Lawyer, 443.

"Criminal Courts of Germany."—5 American Lawyer, 445.

"Misdescriptions in Wills."—17 Canadian Law Times, 201.

"Criminal Appeal in England."—15 Medico-Legal Journal, 1.

"Compulsory Vaccination."—14 Medico-Legal Journal, 421.

"The Playfair Case."—14 Medico-Legal Journal, 455.

"Has the Physician the Right to Terminate Life?"—14 Medico-Legal Journal, 463.

"Colonial Cases."—14 Medico-Legal Journal, 474.

"The Source and Spirit of the Common Law."—1 Legal Counselor, 18.

"Illegal Trade Rivalry."—45 Central Law Journal, 257.

"Attachment — Intervention — Burden of Proof."—45 Central Law Journal, 261.

The Humorous Side.

DIDN'T KNOW IT WOULD HURT.—A young man who lost an arm by getting it into a straw cutter and then sued his employer for the damages tried to avoid the defense of contributory negligence by testifying that, although he knew the rolls carried the straw through to knives that cut it up fine, he did not know that that there was any danger that his hand would be caught by the rolls, or that he would be hurt if it was caught. This discriminating ignorance did not avail him. The court concluded that he knew more than he thought he did.

DOING THEIR WHOLE DUTY.—Two special judges of a Texas civil court of appeals, sitting in place of regular judges who were disqualified, recently improved their opportunity, notwithstanding the dissent of the one regular judge, to overrule some decisions of the supreme court of the state as well as some of the decisions of their own court. They did not shirk their duty or stop with a mere disapproval of the supreme court decisions, but proceeded in express terms to overrule them. This must discourage the supreme court.

But following its unexpected overthrow in its own state comes the surprising information from a northern judge that the Supreme Court of Texas is no more. In a late opinion he says: "The Supreme Court of Texas always stood well with the bench and bar of America, and since its name was changed to that of the Court of Civil Appeals it has lost none of its old-time reputation." This is a pleasant obituary. But if the honored judges of the Texas Supreme Court are mere shades of the past why don't they stop reviewing the decisions of the courts of civil appeals on writs of error?

A FRIENDLY BAR EXAMINATION.—A Georgia correspondent sends us this account of a young man's oral examination for the bar by a local committee before an old judge who was also an old acquaintance of the candidate. Being asked "What is arson?" he scratched his head and finally said, "I believe that's pizon, aint it?" On this the old judge to help him out, says, "Tut, tut, Jim. Suppose I were to set fire to your house and burn it down, what would that be?" With quick and emphatic reply Jim says, "I think it would be a dad dratted mean trick." But although this answer was not technically accurate, Jim was in the hands of his friends and was honorably admitted.

COLLECTING AT THE HALVES.—Soon after Jim's admission as a learned counselor an old neighbor to give him a start gave him a lot of hard claims to collect, telling him he could have half that was collected. Jim soon received half that was due from one of the debtors and was called on a little later by his client for his share of the money. "Your half," said the astute lawyer, "I didn't collect your half. I only collected mine." The astonished old patron said, "Why, Jim, I don't understand such proceeding." But the lofty reply was, "There is a heap of law you don't understand. I tell you, old fellow, this law is a powerful thing."